

MEMORANDUM

To: Board of Environmental Protection

From: Andrew Fisk, Jeff Madore, Linda Kokemuller

Date: June 16, 2005

Re: Chapter 355, Coastal Sand Dune Rules, Posting to Public Hearing

Statutory and Regulatory References:

Chapter 355, Coastal Sand Dune Rules pursuant to statutory authority at 38 M.R.S.A. Section 341-D(1).

Scope:

The rules apply to activities in Maine's coastal sand dune systems as defined in 38 M.R.S.A. Section 480-B of the Natural Resources Protection Act (NRPA) that require an individual permit.

Description:

On June 19, 2003, the Board of Environmental Protection provisionally adopted amendments to Chapter 355, Coastal Sand Dune Rules. The provisionally adopted rules were considered by the Legislature during the second session of the 121st Legislature. The Department testified to some recommended changes to the provisionally adopted rules regarding reconstruction in the frontal dune. As a result of this and other's testimony, the Legislature enacted an amended resolve that required a stakeholder group to revisit significant portions of the rule. The amended resolve included provisions that:

The rules authorized by the Legislature are repealed April 1, 2006. This sunset provision is repealed when the Legislature authorizes revised sand dune rules;

The Commissioner of the Department of Environmental Protection and the Commissioner of the Department of Conservation shall convene a meeting of stakeholders by May 15, 2004 to consider the following issues:

1. A comprehensive state beach nourishment policy;
2. Wildlife and wildlife habitat management in the sand dune system;
3. A program for voluntary acquisition of storm damaged properties or properties for dune enhancement or public access;
4. Improved state coastal hazard mitigation plans to direct federal funding;

5. Improved and increased public and private voluntary hazard mitigation programs;
6. Reconstruction of buildings in the frontal dune and v-zone;
7. Removal of the existing statutory prohibition on the use of outdated v-zone maps; and
8. Regulatory incentives to encourage construction or reconstruction outside of the frontal dune.

That by January 16, 2006, the Department of Environmental Protection shall provisionally adopt and submit to the Legislature revised sand dune rules. Rules adopted pursuant to this resolve are major substantive rules.

The Sand Dune Rules Stakeholder Group formed in response to the legislative resolve is comprised of members from the Departments of Environmental Protection and Conservation, the State Planning Office and representatives of Maine Audubon, Save Our Shores Maine, the Maine Coastal Coalition, the Maine Innkeepers Association, a consulting geologist and a representative from the Conservation Law Foundation. The Group has met regularly since June, 2004 to consider the issues charged to the group by the Legislature.

The Stakeholder Group has considered a range of regulatory issues dealing with the reconstruction of storm damaged structures, seawalls, the definition of high velocity flooding areas (v zones), mitigation requirements, standards for beach nourishment and changes to definitions in the Sand Dune Rules. In addition to these issues charged by the Legislature, the Department has identified minor amendments to the previously amended rules. The proposed amendments to the Sand Dune Rules provide for increased flexibility for landowners and for improvements to the environment of Maine's coastal sand dune systems.

Environmental Issues:

Increased Flexibility for Landowners

1. The rules allow elevators and ramps for handicap access without requiring that they be compatible with the American Disabilities Act (ADA).
2. The rules allow certain modifications to existing seawalls with a permit.

3. The rules allow stairs to be added to non-regulated open decks without a permit.
4. The rules include a definition for the term practicable which provides increased predictability for applicants.

Environmental improvements

1. Stricter standards have been established for reconstruction of buildings after severe damage from wave action from an ocean storm in frontal dune areas outside of V-Zones.
2. The rules require a permit to be applied for within specified time frame when an emergency action has been taken to protect a seawall and the removal of the temporary material.
3. The rules require all reconstructed frontal dune buildings to be moved back to the extent practicable.
4. An additional flood zone (AO zone) has been added to the definition of Erosion Hazard Area.
5. The rules require that the most recently mapped V-Zones will be used in determining compliance with the applicable standards.
6. The definitions of coastal wetland and significant wildlife habitat have been amended to reflect recent statutory changes.
7. The rules establish mitigation and enhancement measures for all projects
8. New standards for large beach nourishment projects have been included.

Department Recommendations:

The Department recommends that the Board post these rule amendments to a public hearing on August 11, 2005.

Estimated Time of Presentation:

1 Hour